IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 18083 of 2004(C)

PETITIONERS:

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1. NARAYANANKUTTY, S/O. VILASINI AMMA,
   KIZHAKKEKKARA VELLATHERI HOUSE,
   CHITTANDA VILLAGE, THALAPPILLY TALUK.

2. MEENAKSHY AMMA, D/O. VILASINI AMMA,
   KIZHAKKEKARA VELLATHERI HOUSE,
   CHITTANDA VILLAGE, THALAPPILLY TALUK.

3. PADMINI, D/O. VILASINI AMMA,
   KIZHAKKEKARA VELLATHERI HOUSE,
   CHITTANDA VILLAGE, THALAPPILLY TALUK.

4. RADHIKA, D/O. VILASINI AMMA,
   KIZHAKKEKARA VELLATHERI HOUSE,
   CHITTANDA VILLAGE, THALAPPILLY TALUK.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS:

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1. SIVARAMAN S/O. PANANGATTIL KUTTAN,
   CHITTANDA VILLAGE, THALAPPILLY TALUK.

2. VILASINI AMMA D/O. PARUKUTTY AMMA
   KIZHAKKEKKARA VELLATHERI HOUSE,
   CHITTANDA VILLAGE, THALAPPILLY TALUK.

3. UNNIKRISHNAN S/O. VILASINI AMMA,
   KIZHAKKEKKARA VELLATHERI HOUSE,
   CHITTANDA VILLAGE, THALAPPILLY TALUK.

4. INDIRA D/O. VILASINI AMMA,
   KIZHAKKEKKARA VELLATHERI HOUSE,
   CHITTANDA VILLAGE, THALAPPILLY TALUK.

5. SIVANANDAN S/O. VILASINI AMMA,
KIZHAKKEKKARA VELLATHERI HOUSE,
CHITTANDA VILLAGE, THALAPPILLY TALUK.

BY ADV. SMT.SHYLAJA VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 18083 OF 2004

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF ORDER IN IA NO.1924/03 IN OS NO.655/01 DT.25.2.2004 0F THE MUNSIFF'S COURT, WADAKKANCHERRY.

EXT.P2 : TRUE COPY OF ORDER IN IA NO.1923/03 IN OS NO.655/01 DT.25.2.04 OF THE MUNSIFF'S COURT, WADAKKANCHERRY.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 18083 OF 2004

Dated this the 11th day of June, 2007

JUDGMENT

Exts.P1 and P2 orders of dismissal passed by the learned Munsiff respectively on an application for leave under Order 1 Rule 8 CPC to sue the 1st respondent representing the entire people of the locality who are interested in the subject matter and seeking consequential amendments are under challenge. The writ petition is remaining defective for want of service of notice to the 1st respondent. It is seen as on a reading of Ext.P1 that the first defendant is abroad and one of his contentions in the petitions was that he is abroad and he is not at all interested in representing the people of the locality. It is accepting that contention that the learned Munsiff passed Ext.P1 and consequently passed Ext.P2 also.

The learned counsel for the petitioner submits that it became necessary to file petition for leave under Order 1 Rule 8 only because of the contention raised by the respondent that the suit as filed is bad for non-joinder of necessary parties and that the disputed pathway is under use by the entire people of the locality. Albeit the above contention, the same will not be justification for impleading an unwilling defendant who

is not in India to represent the entire people in the locality. I do not find any infirmity in the view taken by the court below. Challenge against Exts.P1 and P2 will fail. The Writ Petition will stand dismissed as above.

PIUS C. KURIAKOSE, JUDGE

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